

ELMER TRANSTRUM

IBLA 82-851

Decided July 13, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 38608 through I MC 38611.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

APPEARANCES: Elmer Transtrum, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Elmer Transtrum appeals the April 28, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Mark I, II, III, and IV lode mining claims, I MC 38608 through I MC 38611, abandoned and void because the proof of labor for 1981 was not received prior to December 31, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The claims were located in September 1971. Copies of the notices of location and evidence of assessment work were filed with BLM October 22, 1979. A proof of labor for 1980 was filed December 5, 1980. The proof of labor for 1981 was received by BLM December 31, 1981.

Appellant states that the proof of labor for 1981 was mailed from Emmett, Idaho, December 29, to BLM in Boise, a distance of 40 miles. He submitted a copy of a receipt for certified mail, bearing the postmark of Emmett, Idaho, December 29, 1981. He questions the time in transit of his document. He suggests the action by BLM was more than arbitrary.

The envelope containing the proof of labor bears only a postmark of Boise, Idaho, and the date of December 29. The envelope was correctly addressed to the BLM State Office, 550 West Fort Street, Box 042, Boise, Idaho, 83724. Inexplicably, it was not delivered to BLM until December 31.

[1] Section 314 of FLPMA and the implementing regulations, 43 CFR 3833.2-1 and 3833.4(a), require that evidence of assessment work for each year be filed in the proper BLM office on or before December 30 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed.

Although the evidence shows that the document was actually mailed as claimed, the regulations define "file" to mean being received and date stamped by the proper BLM office. 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even though the delay in delivery of the envelope containing the evidence of assessment work to BLM was apparently caused by the Postal Service, that fact cannot excuse appellant's failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372 (1981); Glenn D. Graham, 55 IBLA 39 (1981); Don Chris A. Coyne, 52 IBLA 1 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, supra. Filing is accomplished only when a document is delivered to and received by the proper BLM office. 43 CFR 1821.2-2(f).

Appellant may wish to consult with BLM about the possibility of relocating his claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Bruce R. Harris  
Administrative Judge

